



**Opening Statement of Rep. Kevin Kiley (R-CA), Chairman
Subcommittee on Workforce Protections Hearing:
“Examining Biden’s War on Independent Contractors”
April 19, 2023**

(As prepared for delivery)

Today’s hearing is about the Right to Earn a Living: the right to practice your profession and pursue your calling; to be a maker, a builder, a creator; to take your God-given talents, nurture them with heart and soul, and offer them to the world.

In a free society, few rights are more fundamental – or more essential to a dynamic and prosperous economy.

Yet at this moment, that right is in peril. The current Administration has launched a multi-pronged assault on the right to earn a living in America. It is a concerted strategy designed to limit or eliminate the gig economy, freelancing, independent contracting, self-employment – alternate work arrangements that entire careers are based on and entire industries have been built around.

The livelihoods of millions of Americans are at risk. Today, we will examine the devastating consequences of this anti-worker agenda.

Those consequences are not a matter of speculation. They are already an established reality – a bitter, unfair, unnecessary reality – for many residents of my own state. You see, in California, the war on independent workers has been underway for years.

The Biden Administration is simply following the model of Governor Gavin Newsom and the California Legislature. At this point, the Administration’s governing motto might as well be: As California goes, so goes the nation.

I should say, as a Californian, that we used to look upon that expression with pride. Over decades, the Golden State forged an identity of historic significance and was at the leading edge of social, political, and technological progress. Ronald Reagan, in his Inaugural Address as Governor, said California should never take second place. We were the state where anyone could get ahead.

Now, sadly, we've become the state many can't wait to leave behind. We do lead the nation – but in all the wrong ways: poverty, inequality, taxes, regulations, income stagnation, and yes, departures. In 2022, for the third straight year, California ranked first among the fifty states in U-Haul rentals.

In its current condition, California is the last place that should be a bellwether for political change in America. Yet that is exactly how President Biden seems to see it, as his Administration attempts to nationalize California's most damaging policies, exporting our state's failures to every state in the union.

In nationalizing the war on workers, Biden has opened three distinct fronts. The first is the PRO Act, which passed the House in the last Congress and has been reintroduced this year by the Ranking Member of this Committee. This legislation takes a specific California law known as AB 5 and makes it into federal policy.

President Biden is supporting the PRO Act, and when running for President, he voiced support for California's AB 5 – even after the law received bipartisan condemnation of a kind without precedent in recent history:

- For example, Governor Newsom's own former deputy chief of staff Yoshar Ali called AB 5 "one of the most destructive pieces of legislation in the past 20 years," adding, "It's truly horrific how many people are negatively impacted by it."
- Former State Assembly Speaker and San Francisco Mayor Willie Brown said the law made him want to "picket" against the "bastards" at the Capitol and the special interests that "took advantage" of them.
- Andrew Cuomo rejected a similar law in New York, saying he didn't want to "make the same mistake" as California.

- The Daily Kos likewise warned other states, “Don’t make the mistake California’s Gavin Newsom did,” with the site’s founder calling the law “disastrous” and “asinine” and its supporters “shameful.”
- The head of the California NAACP assailed AB 5 as a “terrible law” and a “gut punch to our community.”
- The CEO of the Black Chamber of Commerce called it a “catastrophe” responsible for “enabling, defending, and propagating systemic racism.”
- Two hundred Ph.D. economists, including a Nobel Laureate, reported the law is “doing substantial, and avoidable, harm to the very people who now have the fewest resources and the worst alternatives available to them.”
- One commentator called it “the most malicious and harmful law ever passed in California.”

With a single stroke of Newsom’s pen in 2019, AB 5 rendered countless independent professionals unable to earn a living in our state. Writers, interpreters, court reporters, musicians, language pathologists, photographers, forensic nurses, and people in literally hundreds of other industries were told they were no longer allowed to practice their profession and serve their clients as they’d been doing their whole careers; instead, their only option was to find a single hiring entity to monopolize their services and make them a W-2 employee. For many, that was simply not possible.

I have compiled their stories in this book – personal testimonials of Californians who lost their livelihoods after AB 5 was passed.

Turning AB 5 into national policy would multiply these losses. The Chamber of Progress published an economic analysis which shows that implementing AB 5’s rigid “ABC Test” as a national rule would cost the full-time or part-time jobs of between 3.2 and 3.8 million independent contractors – equivalent to roughly half the jobs lost in the Great Recession.

Even where it is possible to convert independent contractors into employees by legal command, it’s not what they want. Seventy-nine percent of independent contractors prefer their current worker status. It lets them set their own schedules and be their own boss. Only 10 percent say they’d prefer a traditional job.

The people most devastated by AB 5 are the most vulnerable: seniors, caregivers, students, single mothers, people with disabilities or health issues or mental health needs – who rely on independent contracting to balance work with their personal life circumstances.

AB 5 has not only been rejected by the very people it is supposedly meant to help, but also by California voters and by the courts. In 2020, voters overwhelmingly passed a proposition overturning the law for app-based drivers. And the Ninth Circuit recently held that AB 5 may violate the Equal Protection Clause of the U.S. Constitution, as over 100 professions have now been exempted from the law while hundreds of others remain ensnared by it, with no rational basis for who is allowed to work and who isn't.

Fortunately, the PRO Act, the national legislation inspired by AB 5, has not become law. Yet the Biden Administration has now opened another front in the war on independent contractors to achieve the same goal. A proposed rule at the Department of Labor would implement the core elements of AB 5 without so much as a vote of Congress. In other words, in a matter of months the Biden Administration is planning to nationalize AB 5 all on its own.

And to aggressively enforce the new regime, Biden has selected a new Secretary of Labor. This is the final front: the nomination of AB 5's architect and lead enforcer, former California Labor Secretary Julie Su, to the highest Labor position in America. It is a direct and literal transfer of California failures to Washington.

Tellingly, with Su's confirmation for U.S. Secretary of Labor now faltering, her backers are making a last-ditch attempt to save her nomination by absurdly trying to *dissociate* her from AB 5. None other than the author of AB 5, a major Su backer who now leads the California Labor Federation, just told the LA Times that Su "was not involved with the bill at all."

Yet Su, in her own words, described in detail her plans for enforcing AB 5 as California Labor Secretary: "We will be doing investigations and audits," she said, threatening fines and penalties, "so that those who want to comply with the need to reclassify can do so and those who don't will understand that's not the kind of economy we want in California."

Not the kind of economy we want in California: Julie Su didn't want an economy in California where you can pursue your calling, support your family on your own terms, and thrive. She doesn't want this for America, either. That's why Joe Biden has selected her for Labor Secretary: to wage his war on independent contractors.

Our committee has a very different vision for the American workforce. We believe in promoting work and supporting workers. We believe independent contractors are critical to the 21st century economy. We will protect the freedom of Americans to earn a living as they choose and will fight every effort to take that right away.

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